

_____ BILL NO. _____

INTRODUCED BY _____
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE SELECTION OF AN INTERN TO WORK FOR THE STATE TO BE BASED SOLELY UPON MERIT; AND AMENDING SECTIONS 2-18-101, 2-18-111, 2-18-601, 2-18-611, 2-18-701, 2-18-809, 2-18-1101, 2-18-1202, AND 2-18-1303, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Selection of intern -- qualifications.** The selection of an intern to work for the state must be based solely upon the intern's academic record and job skill qualifications.

Section 2. Section 2-18-101, MCA, is amended to read:

"2-18-101. Definitions. As used in parts 1 through 3 and part 10 of this chapter, the following definitions apply:

(1) "Agency" means a department, board, commission, office, bureau, institution, or unit of state government recognized in the state budget.

(2) "Base salary" means the amount of compensation paid to an employee, excluding:

(a) state contributions to group benefits provided in 2-18-703;

(b) overtime;

(c) fringe benefits as defined in 39-2-903; and

(d) the longevity allowance provided in 2-18-304.

(3) "Benchmark" means a representative position in a specific occupation that is used to illustrate the application of the job evaluation factor used to determine the pay band for an occupation.

(4) "Board" means the board of personnel appeals established in 2-15-1705.

(5) "Broadband classification plan" means a job evaluation method that measures the difficulty of the work and the knowledge or skills required to perform the work.

(6) "Broadband pay plan" means a pay plan using a pay hierarchy of broad pay bands based on the broadband classification plan.

(7) "Compensation" means the annual or hourly wage or salary and includes the state contribution to

group benefits under the provisions of 2-18-703.

(8) "Competencies" means sets of measurable and observable knowledge, skills, and behaviors that contribute to success in a job.

(9) "Department" means the department of administration created in 2-15-1001.

(10) (a) Except in 2-18-306, "employee" means any state employee other than an employee excepted under 2-18-103 or 2-18-104.

(b) The term does not include a student intern.

(11) "Entry salary" means the entry-level base salary for each occupational pay range.

(12) "Intern" means a person who:

(a) is hired directly by an agency in an intern position;

(b) is not eligible for permanent status;

(c) is not eligible to become a permanent employee without a competitive selection process;

(d) must be covered by the hiring agency's workers' compensation insurance;

(e) is not eligible to earn the leave and holiday benefits provided for in part 6 of this chapter or the group insurance benefits provided in part 7 of this chapter; and

(f) may be discharged without cause.

~~(12)~~(13) "Job evaluation factor" means a measure of the complexities of the predominant duties of the job.

~~(13)~~(14) "Job sharing" means the sharing by two or more persons of a position.

~~(14)~~(15) "Market salary" means the midpoint in an occupational pay range, based on the average base salary that other employers pay to employees in comparable occupations as determined by the department's salary survey of the relevant labor market.

~~(15)~~(16) "Occupation" means a generalized family of jobs having substantially similar duties and requiring similar qualifications, education, and experience.

~~(16)~~(17) "Occupational pay range" means a range of pay, including an entry salary, market salary, and maximum salary, for a specific occupation within a specific pay band. An occupation may have more than one occupational pay range. An occupational pay range must fit within the appropriate pay band.

~~(17)~~(18) "Pay band" means a wide salary range covering a number of different occupations.

~~(18)~~(19) "Permanent employee" means an employee who is designated by an agency as permanent and who has attained or is eligible to attain permanent status.

1 ~~(19)~~(20) "Permanent status" means the state an employee attains after satisfactorily completing an
2 appropriate probationary period.

3 ~~(20)~~(21) "Personal staff" means those positions occupied by employees appointed by the elected officials
4 enumerated in Article VI, section 1, of the Montana constitution or by the public service commission as a whole.

5 ~~(21)~~(22) "Position" means a collection of duties and responsibilities currently assigned or delegated by
6 competent authority, requiring the full-time, part-time, or intermittent employment of one person.

7 ~~(22)~~(23) "Program" means a combination of planned efforts to provide a service.

8 ~~(23)~~(24) "Seasonal employee" means a permanent employee who is designated by an agency as
9 seasonal, who performs duties interrupted by the seasons, and who may be recalled without the loss of rights
10 or benefits accrued during the preceding season.

11 ~~(24)~~(25) "Short-term worker" means a person who:

12 (a) is hired by an agency for an hourly wage established by the agency;

13 (b) may not work for the agency for more than 90 days in a continuous 12-month period;

14 (c) is not eligible for permanent status;

15 (d) may not be hired into another position by the agency without a competitive selection process; and

16 (e) is not eligible to earn the leave and holiday benefits provided in part 6 of this chapter or the group
17 insurance benefits provided in part 7 of this chapter.

18 ~~(25)~~(26) "Student intern" means a person who:

19 (a) has been accepted in or is currently enrolled in an accredited school, college, or university and is
20 hired directly by an agency in a student intern position;

21 (b) is not eligible for permanent status;

22 (c) is not eligible to become a permanent employee without a competitive selection process;

23 (d) must be covered by the hiring agency's workers' compensation insurance;

24 (e) is not eligible to earn the leave and holiday benefits provided for in part 6 of this chapter or the group
25 insurance benefits provided in part 7 of this chapter; and

26 (f) may be discharged without cause.

27 ~~(26)~~(27) "Telework" means a flexible work arrangement where a designated employee may work from
28 home within the state of Montana or an alternative worksite within the state of Montana 1 or more days a week
29 instead of physically traveling to a central workplace.

30 ~~(27)~~(28) "Temporary employee" means an employee who:

- 1 (a) is designated as temporary by an agency for a definite period of time not to exceed 12 months;
2 (b) performs temporary duties or permanent duties on a temporary basis;
3 (c) is not eligible for permanent status;
4 (d) is terminated at the end of the employment period; and
5 (e) is not eligible to become a permanent employee without a competitive selection process."
6

7 **Section 3.** Section 2-18-111, MCA, is amended to read:

8 **"2-18-111. Hiring preference for residents of Indian reservations for state jobs within reservation**

9 -- **rules.** (1) A state agency that operates within an Indian reservation shall give a preference in hiring for
10 employment with the state agency to an Indian resident of the reservation who has substantially equal
11 qualifications for the position.

12 (2) The commissioner of labor and industry shall enforce this section and investigate complaints of its
13 violation and may adopt rules to implement this section.

14 (3) For the purposes of this section, the following definitions apply:

15 (a) "Employment" means being employed as a permanent, temporary, or seasonal employee as defined
16 in 2-18-101 for a state position. The term does not include:

17 (i) a state elected official;

18 (ii) appointment by an elected official to a body, such as a board, commission, committee, or council;

19 (iii) appointment by an elected official to a public office if the appointment is provided for by law;

20 (iv) engagement as an independent contractor or employment by an independent contractor; or

21 (v) engagement as an intern or a student intern.

22 (b) "Indian" means a person who is enrolled or who is a lineal descendant of a person enrolled upon an
23 enrollment listing of the bureau of Indian affairs or upon the enrollment listing of a recognized Indian tribe,
24 domiciled in the United States.

25 (c) "State agency" means a department, office, board, bureau, commission, agency, or other
26 instrumentality of the executive or judicial branches of the government of this state."
27

28 **Section 4.** Section 2-18-601, MCA, is amended to read:

29 **"2-18-601. Definitions.** For the purpose of this part, except 2-18-620, the following definitions apply:

30 (1) (a) "Agency" means any legally constituted department, board, or commission of state, county, or

city government or any political subdivision of the state.

(b) The term does not mean the state compensation insurance fund.

(2) "Break in service" means a period of time in excess of 5 working days when the person is not employed and that severs continuous employment.

(3) "Common association" means an association of employees established pursuant to 2-18-1310 for the purposes of employer and employee participation in the plan.

(4) "Continuous employment" means working within the same jurisdiction without a break in service of more than 5 working days or without a continuous absence without pay of more than 15 working days.

(5) "Contracting employer" means an employer who, pursuant to 2-18-1310, has contracted with the department of administration to participate in the plan.

(6) "Employee" means any person employed by an agency except elected state, county, and city officials, schoolteachers, persons contracted as independent contractors or hired under personal services contracts, and student interns.

(7) "Full-time employee" means an employee who normally works 40 hours a week.

(8) "Holiday" means a scheduled day off with pay to observe a legal holiday, as specified in 1-1-216 or 20-1-305, except Sundays.

(9) "Intern" means a person who:

(a) is hired directly by an agency in an intern position;

(b) is not eligible for permanent status;

(c) is not eligible to become a permanent employee without a competitive selection process;

(d) must be covered by the hiring agency's workers' compensation insurance;

(e) is not eligible to earn the leave and holiday benefits provided for in part 6 of this chapter or the group insurance benefits provided in part 7 of this chapter; and

(f) may be discharged without cause.

~~(9)~~(10) "Member" means an employee who belongs to a voluntary employees' beneficiary association established under 2-18-1310.

~~(10)~~(11) "Part-time employee" means an employee who normally works less than 40 hours a week.

~~(11)~~(12) "Permanent employee" means a permanent employee as defined in 2-18-101.

~~(12)~~(13) "Plan" means the employee welfare benefit plan established under Internal Revenue Code section 501(c)(9) pursuant to 2-18-1304.

~~(13)~~(14) "Seasonal employee" means a seasonal employee as defined in 2-18-101.

~~(14)~~(15) "Short-term worker" means:

(a) for the executive and judicial branches, a short-term worker as defined in 2-18-101; or

(b) for the legislative branch, an individual who:

(i) is hired by a legislative agency for an hourly wage established by the agency;

(ii) may not work for the agency for more than 6 months in a continuous 12-month period;

(iii) is not eligible for permanent status;

(iv) may not be hired into another position by the agency without a competitive selection process; and

(v) is not eligible to earn the leave and holiday benefits provided in this part or the group insurance benefits provided in part 7.

~~(15)~~(16) "Sick leave" means a leave of absence with pay for:

(a) a sickness suffered by an employee or a member of the employee's immediate family; or

(b) the time that an employee is unable to perform job duties because of:

(i) a physical or mental illness, injury, or disability;

(ii) maternity or pregnancy-related disability or treatment, including prenatal care, birth, or medical care for the employee or the employee's child;

(iii) parental leave for a permanent employee as provided in 2-18-606;

(iv) quarantine resulting from exposure to a contagious disease;

(v) examination or treatment by a licensed health care provider;

(vi) short-term attendance, in an agency's discretion, to care for a relative or household member not covered by subsection (15)(a) until other care can reasonably be obtained;

(vii) necessary care for a spouse, child, or parent with a serious health condition, as defined in the Family and Medical Leave Act of 1993; or

(viii) death or funeral attendance of an immediate family member or, at an agency's discretion, another person.

~~(16)~~(17) "Student intern" means a student intern as defined in 2-18-101.

~~(17)~~(18) "Temporary employee" means a temporary employee as defined in 2-18-101.

~~(18)~~(19) "Transfer" means a change of employment from one agency to another agency in the same jurisdiction without a break in service.

~~(19)~~(20) "Vacation leave" means a leave of absence with pay for the purpose of rest, relaxation, or

personal business at the request of the employee and with the concurrence of the employer."

Section 5. Section 2-18-611, MCA, is amended to read:

"2-18-611. Annual vacation leave. (1) Each permanent full-time employee shall earn annual vacation leave credits from the first day of employment. Vacation leave credits earned must be credited at the end of each pay period. However, employees are not entitled to any vacation leave with pay until they have been continuously employed for a period of 6 calendar months.

(2) Seasonal employees earn vacation credits. However, seasonal employees must be employed for 6 qualifying months before they may use the vacation credits. In order to qualify, seasonal employees shall immediately report back for work when operations resume in order to avoid a break in service.

(3) Permanent part-time employees are entitled to prorated annual vacation benefits if they have worked the qualifying period.

(4) An employee may not accrue annual vacation leave credits while in a leave-without-pay status.

(5) Temporary employees earn vacation leave credits but may not use the credits until after working for 6 qualifying months.

(6) A short-term worker, an intern, or a student intern, as ~~both these~~ terms are defined in 2-18-601, may not earn vacation leave credits, and time worked as a short-term worker, as an intern, or as a student intern does not apply toward the person's rate of earning vacation leave credits."

Section 6. Section 2-18-701, MCA, is amended to read:

"2-18-701. Definition. As used in this part, the following definitions apply:

(1) "Dependent" has the meaning provided in 33-22-140.

(2) (a) "Employee", as the term applies to a person employed in the executive, judicial, or legislative branches of state government, means:

(i) a permanent full-time employee, as provided in 2-18-601;

(ii) a permanent part-time employee, as provided in 2-18-601, who is regularly scheduled to work 20 hours or more a week;

(iii) a seasonal full-time employee, as provided in 2-18-601, who is regularly scheduled to work 6 months or more a year or who works for a continuous period of more than 6 months a year although not regularly scheduled to do so;

(iv) a seasonal part-time employee, as provided in 2-18-601, who is regularly scheduled to work 20 hours or more a week for 6 months or more a year or who works 20 hours or more a week for a continuous period of more than 6 months a year although not regularly scheduled to do so;

(v) elected officials;

(vi) officers and permanent employees of the legislative branch;

(vii) judges and permanent employees of the judicial branch;

(viii) academic, professional, and administrative personnel having individual contracts under the authority of the board of regents of higher education or the state board of public education;

(ix) a temporary full-time employee, as provided in 2-18-601:

(A) who is regularly scheduled to work more than 6 months a year;

(B) who works for a continuous period of more than 6 months a year although not regularly scheduled to do so; or

(C) whose temporary status is defined through collective bargaining;

(x) a temporary part-time employee, as provided in 2-18-601:

(A) who is regularly scheduled to work 20 hours or more a week for 6 months or more a year;

(B) who works 20 hours or more a week for a continuous period of more than 6 months a year although not regularly scheduled to do so; or

(C) whose temporary status is defined through collective bargaining; and

(xi) a part-time or full-time employee of the state compensation insurance fund. As used in this subsection, "part-time or full-time employee of the state compensation insurance fund" means an employee eligible for inclusion in the state employee group benefit plans under the rules of the department of administration.

(b) The term does not include an intern or a student intern; as defined in 2-18-101."

Section 7. Section 2-18-809, MCA, is amended to read:

"2-18-809. Definitions. As used in this part, the following definitions apply:

(1) "Advisory council" means the state employee group benefits advisory council provided for in 2-15-1016.

(2) "Department" means the department of administration provided for in 2-15-1001.

(3) "Flexible spending account" means a funding and accounting arrangement allowed by federal law that:

(a) gives a state employee a choice between receiving taxable salary or having a part of the employee's salary withheld; and

(b) provides for depositing any portion of the state employee's salary withheld and any employer contribution designated by the employee into an account and receiving from that account nontaxable reimbursement for certain out-of-pocket medical expenses of the state employee or a dependent of the employee.

(4) "Group benefits" means group hospitalization, health, medical, surgical, disability, life, and other similar and related group benefits provided to officers and employees of the state, including flexible spending account benefits. The term "group benefits" does not include casualty insurance, defined in 33-1-206; marine insurance, authorized in 33-1-209 and 33-1-221 through 33-1-229; property insurance, defined in 33-1-210; surety insurance, defined in 33-1-211; and title insurance, defined in 33-1-212.

(5) (a) "State employee" means an employee of the state, specifically including a member or employee of the legislative branch of state government.

(b) The term "state employee" does not include employees of counties, cities, towns, school districts, or the Montana university system or an intern or a student intern; as defined in 2-18-101."

Section 8. Section 2-18-1101, MCA, is amended to read:

"2-18-1101. Definitions. As used in this part, the following definitions apply:

(1) "Agency head" means a director, commissioner, or constitutional officer in charge of an executive, legislative, or judicial branch agency or an agency of the Montana university system. The term includes the president or other person in charge of a public retirement board or a unit of the Montana university system.

(2) "Department" means the department of administration provided for in 2-15-1001.

(3) (a) "Employee" means an employee of the executive, legislative, or judicial branch or the Montana university system.

(b) The term does not include an intern or a student intern; as defined in 2-18-101.

(4) "Group or team of employees" means a group, team, or work unit of employees working cooperatively."

Section 9. Section 2-18-1202, MCA, is amended to read:

"2-18-1202. Definitions. As used in this part, the following definitions apply:

(1) "Agency" has the meaning provided in 2-18-101 but does not include the Montana university system.

(2) (a) "Employee" means a person employed by the state who has achieved permanent status, as defined in 2-18-101, or officers and employees of the legislative branch and teachers under the authority of the department of corrections or department of public health and human services who have been employed for at least 6 continuous months.

(b) The term does not include an intern or a student intern; as defined in 2-18-101.

(3) "Privatization" means contracting with the private sector to provide a service normally or traditionally provided directly by an employee of an agency."

Section 10. Section 2-18-1303, MCA, is amended to read:

"2-18-1303. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Common association" means an association of employees established pursuant to 2-18-1310 for the purposes of employer and employee participation in the plan.

(2) "Contracting employer" means an employer who, pursuant to 2-18-1310, has contracted with the department to participate in the plan.

(3) "Department" means the department of administration established in 2-15-1001.

(4) (a) "Employee" means a person employed by an employer.

(b) The term does not include an independent contractor, a person hired by the employer under a personal services contract, an intern, or a student intern, as defined in 2-18-101.

(5) "Employer" means a legally constituted department, board, commission, or any other administrative unit of state government, a county, an incorporated city or town, or any other political subdivision of the state, including a school district, or a unit of the university system.

(6) "Health care expense trust account" or "account" means an account established for the payment of qualified health care expenses under the plan.

(7) "Member" means an employee who belongs to a voluntary employees' beneficiary association established under 2-18-1310.

(8) "Plan" means the employee welfare benefit plan established under Internal Revenue Code section 501(c)(9) pursuant to 2-18-1304.

(9) "Qualified health care expenses" means expenses paid by a member for medical care, as defined by 26 U.S.C. 213(d), for the member or the member's dependent as defined by 26 U.S.C. 152."

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